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AMENDING THE INDIAN FINANCING ACT OF 1974, AND FOR OTHER PURPOSES

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1360]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1360) to amend the Indian Financing Act of 1974, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

To amend the Indian Financing Act of 1974 (1) to allow guaranteed loans to be sold or assigned to any person; (2) to increase the ceiling loan guarantee authority by raising the amount to $500,000,000; (3) to raise the amount of loans to individual Indians or economic enterprises from $350,000 to $500,000; and (4) to require the Secretary of Interior to seek additional appropriations in the event that insufficient funds are available to make payments required because of losses on loans guaranteed or insured under this title.

BACKGROUND AND NEED

The revolving loan fund was first authorized by Act of June 18, 1934 (48 Statute 986), Act of June 26, 1936 (49 Statute 1967), Act of April 19, 1950 (64 Statute 944) and the Act of April 12, 1974 (88 Statute 78). The Indian Loan Guaranty and Insurance Fund was established pursuant to the Indian Financing Act of 1974. That Act

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was amended by the Indian Financing Act Amendments of 1984 (P.L. 98–449).

The Indian Financing Act of 1974 (25 U.S.C. 1451, et seq.) established four major programs. Title I of the 1974 Act consolidated four existing revolving loan programs of the Bureau of Indian Affairs (BIA) into a single Indian revolving loan fund and increased the authorization for this program by $50 million, of which $45 million was appropriated. Under this program, direct federal loans are made to tribes, Indian organizations, and individual Indians at relatively low interest rates for economic purposes. S. 1360, as amended, does not amend or change Title I in any manner.

Title II of the 1974 Act established the loan guaranty and insurance program. The purpose of this program is to provide access to private money sources through guaranteeing or insuring loans which otherwise would not be available to Indian tribes and organizations, individual Indians, and Alaskan Natives for economic development.

Appropriations were made to the fund in 1975, 1976 and 1977, in the amounts of $20 million, $10 million, and $15 million, respectively, making a total of $45 million available for the implementation of this program. The first loan guaranty was approved in August 1975. As of September 30, 1986, guarantees were approved on 259 loans totaling $215.3 million. The BIA has by regulation imposed a fee, on private lending institutions, of ½ percent per annum of the outstanding principal of each loan guaranteed. Since the initiation of this program these funds have amounted to $2,638,445.20. The breakdown by fiscal year and current status of the loans under this program is shown in Table I.

TABLE 1.—INDIAN FINANCING ACT—LOAN GUARANTY ACTIVITY, FISCAL YEAR 1976–86

Loans guaranteed— Year	Number	Amount	Defaulted	Repaid	Cancel	Modified	Current
1976	58	$14,863,405	20	18	5	5	10
1977	44	42,872,532					
Plus modified [1]	3	331,211	15	15	7	2	8
1978 [2]	13	8,215,875					
Plus modified [1]	3	129,585	5	7	2	1	1
1979	6	1,640,000					
Additional loan [3]		624	1	1			4
1980	1	8,500,000					
Additional loan [3]		10,094		1			0
1981	1	1,000,000		1			0
1982	8	25,880,000	1	2			5
1983	14	12,953,869		3			11
Additional loan [4]		800,000					
1984	35	18,789,448	3	2	1	3	26
Additional loan [4]		203,900					
1985	47	31,603,258		1	1	1	43
Additional loans [4]		10,123,457	1				

1986	26	37,210,046					
Modifications [4]		188,065					26
Total	259	215,315,369	46	51	16	12	134

Note.—New—253. Modified—6.

[1] Six original loans were completely modified and additional funds advanced.

[2] The Loan Guaranty Program was closed November 1978 to new loan applications. Loan applications on hand and commitments to guarantee $36 million in new loans required reserving all available program funds. In FY 1981, the program was reopened, since two proposed guarantees for large loans were cancelled.

[3] Funds were added to existing loans for protective advances.

[4] Funds were added to existing loans.

The Small Business Administration has also been involved in direct loans and loan guarantees to American Indians for a number of years. Table 2 delineates that acitivity since fiscal year 1966.

TABLE 2.—SMALL BUSINESS ADMINISTRATION BUSINESS LOAN APPROVALS FOR AMERICAN INDIANS

	Number of loans	Total amount	SBA amount
Fiscal year:			
1966	28	$270,300	$270,300
1967	32	689,200	624,850
1968	43	1,486,880	1,422,170
1969	91	2,147,250	2,056,900
1970	227	5,975,075	5,410,373
1971	330	11,763,043	11,000,436
1972	715	7,126,889	6,803,719
1973	323	11,893,920	11,050,387
1974	180	6,531,800	6,078,360
1975	213	8,831,951	8,196,666
1976	189	8,187,624	7,637,134
1976A	49	2,590,290	2,362,719
1977	196	12,995,323	11,824,690
1978	194	15,053,709	13,337,271
1979	180	14,263,655	13,009,900
1980	222	15,878,295	14,806,172
1981	194	20,777,602	18,315,036
1982	83	7,840,900	6,979,830
1983	82	10,376,720	9,169,098
1984	77	8,831,883	7,786,275
1985	76	10,328,344	9,222,180
1986	57	8,468,792	7,102,149
Total	3,781	192,309,445	174,466,615

Title III of the 1974 Act authorizes interest subsidy payments on guaranteed or insured loans to reduce the Indian borrower's interest rate to that rate chargeable under the direct loan program.

A reserve for losses is maintained to pay defaulted guaranteed loans. As of September 30, 1986, $13.9 million has been paid for defaulted loans since 1975. However, loss claims totaling $2.4 million are pending settlement. At the end of FY 1988, it is estimated that $5.4 million will be in the reserve. This amount will represent 3.2 percent of the $170.6 million in contingent liability for guaranteed loans expected to be outstanding at the end of FY 1988. The information on loans guaranteed, since 1975, is shown on Table 3.

Table 3.—Indian Financing Act—Information on loans guaranteed, since 1975

Total number of loans	259
Loans to Indian tribes	88
Indian-owned corporations	59
Indian individuals	112
Lenders approved for participation in the program	253
Loans:	
Outstanding	134
Paid Off	51

Defaulted	46
Total payout for the defaulted loans--including interest (6% of the total dollar amount guaranteed to September) (million)	$13.9

Of the 46 loans defaulted:	
Repaid either by the borrower or liquidation	4
Cancelled	17
Repaying	7
In process of settlement	18
Total	46

Title IV of the 1974 Act established the Indian business development program in which nonreimbursable grants of up to 40 percent of the funding need are made to establish enterprises on or near reservations. The title provides that grants to individuals may not exceed $50,000 and grants to tribes may not exceed $250,000; that at least 60 percent of the funds needed must come from other sources, and that the Secretary must assure that the applicant reasonably makes his own financial resources available for the enterprise. Fiscal year 1979 was the last year funds were authorized to be appropriated for this title although $6 million has been requested in the Fiscal Year 1988 budget.

Testimony presented at the Committee's April 29 hearing attested to the fact that there was a greatly increased demand for loan guarantees. Witnesses representing a broad spectrum of Indian tribes and business organizations testified they observed a healthy entrepreneurial trend developing on Indian reservations. New businesses were initiated or expanded at a much greater rate than in previous years because of the great interest in business start-ups and emphasis on expansion of the private sector economy on Indian Reservations placed by tribal members across the country.

To finance these business initiatives Indians were increasingly turning to the private sector for assistance rather than looking to the federal government. However private lenders such as banks and savings and loans were reluctant to extend credit to Indians on reservations because they believed that the risk was too great due to the trust status on assets that might otherwise be used as collateral and the uncertainty of enforcing creditors rights under tribal law. Consequently many banks were only willing to consider business loans where these unusual risks could be protected through a government guarantee.

Summary of Provisions

Section 1 of the bill authorizes the limitation on the amount of loans to individual Indians to be increased from $350,000 to $500,000. The $500,000 figure was arrived at because it reflects a more realistic amount of capital needed to start a business today and is comparable to other government efforts such as the Small Business Administration's (SBA) loan guarantee program.

Section 2 addresses the assignment of loans. The Committee has been contacted by tribes and Indian business people from across the country regarding the benefits to be gained from amending the law to allow for the resale of the loan guarantee certificate. Thus S. 1360 would eliminate a restriction currently in the law which essentially provides that only state or federal regulated banks can

own the guarantee certificate. By eliminating the restriction it is anticipated that an active secondary market for the loan guarantee certificate will develop and that this will provide a real incentive for banks to consider making Indian business loans under the Indian Finance Act guarantee program.

Section 3 of the bill raises the aggregate loan limitation. The $200 million ceiling placed on the loan guarantee program in 1974 has never been adjusted upward. However the current trends show that the demand for loan guarantees over the next year will exceed the available loan guarantee authority of $200 million. Consequently the proposal to statutorily increase the authority under the program may be considered timely and justified in light of the governments strong policy in support of private business development on Indian Reservations.

Section 4 of the bill addresses the authorization of appropriations. The Committee was informed that an adjustment to the appropriation authority which would make it possible to expand the guarantee program on a flexible, as needed basis, is necessary. Rather than authorize a specific dollar amount, Section 5 which amends Subsection (e) of Section 217 would authorize a supplemental appropriation to pay losses on the guaranteed loan program as they occur. The average annual payout for defaulted loans since 1975 is 4 percent of the total dollar amount guaranteed to September 1987, which is considered a conservative risk management program.

Legislative History

S. 1360 was introduced by Senator Burdick for himself and Senators Inouye, Evans, McCain, and Daschle on June 11, 1987. The Select Committee on Indian Affairs held a hearing on a draft of S. 1360 April 29, 1987. The bill was ordered reported out at a business meeting of the Select Committee on July 30, 1987. There is no companion bill in the House.

Committee Recommendations and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on June 30, 1987, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1306, as amended.

Committee Amendments

The Committee recommends an amendment in the nature of a substitute.

Section-by-Section Analysis

Section 1. This section amends Section 204 of P.L. 93-262, 88 Stat. 77 and increases the limitations on the amount of loans to individual Indians or economic enterprises from $350,000 to $500,000.

Section 2. This section amends Section 205 of P.L. 93-262, 88 Stat. 77 and removes the restriction on the sale or assignment of loans to financial institutions subject to examination and supervision by the United States as now provided in 25 U.S. Code Section 1485.

Section 3. This section amends Section 216 of P.L. 93-262, 88 Stat. 77 and raises the loan guarantee authorization from $200,000,000 to $500,000,000.

Section 4. This section amends Section 217 Subsection (e) of Section 217 of P.L. 93-262, 88 Stat. 77 states that all amounts appropriated under the authority of this section shall remain available until expended.

Cost and Budgetary Considerations

The cost estimates for S. 1360 as provided by the Congressional Budget Office are outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 23, 1987.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1360, a bill to amend the Indian Financing Act of 1974, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Edward M. Gramlich,
Acting Diretor.

Congressional Budget Office Cost Estimate

1. Bill number: S. 1360.

2. Bill title: A bill to amend the Indian Financing Act of 1974, and for other purposes.

3. Bill status: As amended and ordered reported by the Senate Select Committee on Indian Affairs, June 17, 1987.

4. Bill purpose: This bill would increase the availability of loan guarantees under the Indian Loan Guaranty and Insurance Fund within the Bureau of Indian Affairs. The allowable contingent liability of the federal government would be increased from $200 million to $500 million for the program and from $350,000 to $500,000 for any single loan. In addition, the bill would allow loans to be sold or assigned to any party and would require the Secretary of the Interior to use available appropriated funds to meet any shortfalls in the fund resulting from defaults or interest subsidies.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992
Estimated Authorization Level	0.1	0.4	0.8	1.5	2.2
Estimated Outlays	.1	.5	1.1	1.9	2.8

The costs of this bill fall within budget function 450.

Basis of Estimate: The costs of this bill are estimated assuming average annual demand of loan guarantees of $40 million. This exceeds current CBO estimates, which are constrained by the $200 million limitation, by about $10 million in each of the fiscal years 1988 and 1989 and $20 million annually thereafter. Interest rates on loans guaranteed under this program are subsidized by the federal government such that the rates paid by borrowers approximate short-term Treasury interest rates. Default rates are assumed to remain at historical levels (about 6 percent) and subsidies are calculated using CBO interest rates projections. Guaranty premiums are assumed to remain at current levels. Estimated outlays may exceed the estimated appropriations required because of the two-year lag in the reimbursement of losses for defaults.

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill.

The Committee believes that S. 1360 will have minimal regulatory or paperwork impact.

Executive Communications

The Administration has not officially notified the Committee of its position on all of these proposals. However, in their testimony, at the April 29, 1987 hearing Assistant Secretary Swimmer expressed strong support for Section 3 which removes the restriction on the sale or assignment of guaranteed loans to a variety of investors in addition to financial institutions. The Administration did not support Section 2 which would raise the cap on loan guarantees from $200 million to $500 million. However, it was acknowledged that the current Loan Guarantee program is approaching the $200 million limit and that "there may be a need to raise that limit". The Assistant Secretary was ambivalent as to what the limit should be however.

The prepared statement of the Assistant Secretary at the April 29, 1987 hearing, as it related to the proposed Indian Financing Act amendments follows:

Prepared Statement of Ross O. Swimmer

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to discuss Indian economic development issues, including certain proposed amendments to the Indian Financing Act of 1974, and potential clarifying legislation relating to procurement from Indians, including Indian enterprises and other Indian entities such as defined in laws codified in 25 U.S.C. 450b and 1452.

AMENDING THE INDIAN FINANCING ACT

I will begin by addressing the two proposed amendments to the Indian Financing Act sent to us with your April 15 letter inviting us to testify at this hearing. The first amendment would amend

section 205 (25 U.S.C. 1485) of the Act to provide that a loan guaranteed under the Act, including security given for the loan, may be sold or assigned by the lender to any "person". As you know, under section 1 of title 1, U.S. Code, the term "person" as used in Acts of Congress includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals".

Section 205 now limits the sale or assignment of guaranteed to "financial institutions" regulated by a government. This limitation on use of existing secondary market sources effectively impedes access by tribes to financing. We note that the restriction is not consistent with the provision in section 208 (25 U.S.C. 1488) of the Act which permits a guaranteed loan to be made "by any lender satisfactory to the Secretary", thereby authorizing a primary market broader than the authorized secondary market.

A possible problem in the sale of guaranteed loans in the secondary market is the servicing of the loan. However, we would expect the original lender to be responsible for the servicing.

The second amendment to the Indian Financing Act would amend section 217 (25 U.S.C. 1497) to increase the limit on the aggregate amount of loans which may be insured or guaranteed under the Act from $200 million to $500 million. Under present conditions requiring the control and reduction of Federal budget deficits, it is not possible for us to support this amendment. However, we would be pleased to work with the Committee on an analysis of the program's activity levels and a forecast for the next few years to determine when an increase will be needed and the amount of the increase reasonably needed to carry the program for three years.

We understand that this Committee may explore other possible amendments to the Indian Financing Act. We are informed that these amendments might include:

(1) Authorizing the sale of direct loans made under the Act and use of the proceeds to replenish the revolving direct loan fund in the same way that repayments of direct loans replenish the fund.

(2) Authorizing the payment of guaranteed loan default claims under section 211 (25 U.S.C. 1491) in advance of appropriations to increase the value of the guarantee to prospective lenders;

(3) Authorize grants made under title IV of the Act (25 U.S.C. 1521–1524) to be used for "private paid-in capital and paid-in surplus" under the Small Business Act;

(4) Authorizing use of the Loan Guarantee and Insurance Fund to cover performance bonds, asset risk insurance, and Indian Tax Status Act bonds under certain low-risk criteria; and

(5) Modification of the "on or near reservations" restriction on grants in section 401 (25 U.S.C. 1521).

The final Administration positions on amendments such as the foregoing must await further study should the Committee wish a report based on them or on an introduced bill incorporating such proposals.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1360 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 93-262, AS AMENDED

TITLE III—LOAN GUARANTY AND INSURANCE

SEC. 204. The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for prior approval. The Secretary shall review each loan application individually and independently from the lender. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. Such certificate shall be issued only when, in the judgment of the Secretary, there is a reasonable prospect of repayment. No loan to an individual Indian may be guaranteed or insured which would cause the total unpaid principal indebtedness to exceed [$350,000] *$500,000.* No loan to an economic enterprise (as defined in section 3 of this Act) in excess of $100,000, or such lower amount as the Secretary may determine to be appropriate, shall be insured unless prior approval of the loan is obtained from the Secretary.

[SEC. 205. Any loan guaranteed hereunder, including the security given therefor, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the United States or of any State or the District of Columbia.]

SEC. 205. Any loan guaranteed under this title, including the security given for such loan, may be sold or assigned by the lender to any person.

* * * * * * *

SEC. 217. (b) The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans guaranteed or insured under this title, but the aggregate of such loans which are insured or guaranteed by the Secretary shall be limited to [$200,000,000] *$500,000,000.*

* * * * * * *

(e) There are authorized to be appropriated for fiscal year 1985, and for each fiscal year thereafter, an amount which does not exceed $5,500,000 for purposes of making interest payments authorized under this subchapter. [Sums appropriated under this section shall remain available until expended.] *All collections and all moneys appropriated pursuant to the authority of this subsection shall remain available until expended.*

(f) In the event that the amount in the fund is not sufficient to maintain an adequate level of reserves, as determined by the Secretary of the Interior, necessary to meet the responsibilities of the fund in connection with losses on loans guaranteed or insured under this title, the Secretary shall promptly notify the President of that fact,

and within the 30-day period following such notification, the President shall submit to the Congress a proposed supplemental appropriation request in an amount necessary to assure an adequate level of reserves.

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